
**INDIGENOUS METHODS OF CONFLICT RESOLUTION: AN OUTLOOK
ON ISSUES, CHALLENGES, RELEVANCE AND SCOPES.**

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ABSTRACT

Conflict is an inescapable part of human society. Resolution of conflict is utterly important for the maintenance of social order and harmony. Given to the originality of indigenous society through the earth, some Indigenous methods of Conflict Resolution (IMCR) are still in the practice of which a few have got the recognition of the concerned nation or state. The present study will throw light on the truth and relevance of IMCR. The study attempted to present insights and initiatives of different Government, Non-Government agency and of the law and policymakers of the different region to understand the effects and relevance of IMCR in contemporary societies. Through the study, a critical evaluation has been made on the hope of continuation of such traditional methods and institutions by the younger generation. The study also upheld the reasons of support for traditional indigenous institutions by the concerned people over the modern legal court. The study suggests that to shoulder with modern jurisdiction IMCR needs to have time-based revise system. Sharing of space in jurisdiction both by IMCR and modern laws can make the conflict resolution methods sustainable.

Keywords: Conflict Resolution, IMCR, Humane society, Modern laws

INTRODUCTION

Conflict is an instinctive and inescapable section of social relationships of human regardless of society. Conflict occurs at every stage of society all over the world (Laue, 1987). In human society Conflict is omnipresent (Lederach, 1996; Jurgen et al., 2006). Personal conflict, racial conflict, class conflict, political conflict, conflict of values and interests, communal and non-communal conflicts, ethnic conflicts, ideological conflict, cultural conflicts, economic conflicts, and social conflicts, etc. are the diversified types of conflict (Burton, 1986).

Presently, conflict resolution indicates the cessation of a conflict through the eradication of the inherent bases or cause of the conflict (Burton and Dukes, 1990). Conflict resolution aims toward

converting conflicts constructively, even creatively by assuring reduced violence, animosity amidst antagonists are overcome; outcomes are mutually admissible to the adversaries; and settlements are enduring (Kriesberg, 1997). But, it does not always take a constructive path (Deutsch, 1987). People have adopted diverse ways to settle conflicts among themselves across the globe. Various initiatives, strategies methods have been used to settle conflicts following traditional and modern measures. Several of the initiatives and methods used of which some are bureaucratic and more formal modern measures while some are traditional measures (Amaya, 2017).

The term '*indigenous*' refers local, folk, traditional which is evolved from the multiple sources, within which traditional teaching, empirical observation and its culture that carries the historical experience of people, adapts to social economics, environmental, spiritual and political change are being included. A holistic, relational and spiritual aspect also does come under the realm of indigenous. Native groups, mountain people, tribal clans, cultural minorities, hill tribes, and highland inhabitants are also being called indigenous people (Osi, 2008).

Indigenous conflict resolution is a hereditary way of solving conflict based on culture, practices beliefs, faiths and rituals in a holistic manner. It indicates to institutions which have been created out of western influence (Tuso, 2011).

Amidst the indigenous people, conflict resolution not just refer to solve atrocity between two sides but also to heal the depreciated relationship, and rectify misdeed, and restore justice where the dispute is not only amongst the disputants but amid the entire community (Utne, 2001). Resolution methods, therefore, were culturally prescribed. Emphasis was placed on reconciling the protagonists with each other, rather than on establishing right and wrong, winner or loser. Thus punishment was not aimed at retaliation, but at restoring equilibrium, usually through the mechanisms of restitution, apology and reconciliation. There was an emphasis on justice and fairness, forgiveness, tolerance and coexistence. The approach thus emphasizes the healing of emotional wounds created by conflict and restoration of social relationships. The negotiation or reconciliation process in the traditional setting was seen as a re-establishment of relationships between people where elders play mediating roles in promoting and containing social cohesion, peace and order in societies. (Osamba, 2001). Spiritual and cultural mechanisms, institution and values have played an important role in indigenous conflict resolution (Hwedie and Rankopo, 2009)

The Indigenous Methods of Conflict Resolution (IMCR) around the world have been relevant and efficiently being practiced in the diversified realm especially among the tribal groups of Latin America, Africa, Middle-east, and Asia together with India epically in its Northeastern tribal zone (Ginty, 2011).

The indigenous conflict resolution is practiced in diversified forms around the globe. Some of them are well organized and/or some of them are not and do not have formal tangible offices as such, but, practices are in symbolic rituals, dialogue, mediation, relationship and community-based approach and spiritual forms as an ultimate way to solve local conflict other than a modern formal institution. As such oath taking and biting tiger tooth among Dimasa and Karbi Tribe in Assam and Lotha in Nagaland (D'Sousa, 2011).

Indigenous conflict resolution has been upheld and encouraged by comprehensive funding agencies and research institution to turn the conflict resolution more efficient and to aid people to achieve a range of social, cultural and economic goals and justice (NADRAC, 2006).

OBJECTIVES

- The present study is an attempt to figure out the Indigenous Methods of Conflict Resolution (IMCR) and its worldwide practice.
- Through the present study author endeavoured to understand the role of IMCR in the different society in different context.
- The study has been done to perceive the relevance and scopes of Indigenous Methods of Conflict Resolution in contemporary society.

RESEARCH QUESTIONS

- What does it mean by Indigenous Methods of Conflict Resolutions?
- How does the IMCR play the role in the different context?
- How to figure out the issues, challenges, relevance and scopes of Indigenous Methods of Conflict Resolution in modern society?

HYPOTHESIS

The relevance of Indigenous Methods of Conflict Resolution appears to be valid and acknowledged in modern societies.

ISSUES AND CHALLENGES RELATED TO IMCR

Modern methods of conflict resolutions are being opposed on different ground. As it focuses on conflict management rather than conflict resolution, which give rise to conflict transformation, sowing further causes of conflict. As it aims at removal of manifest conflict without paying attention to the removal of root causes of conflict, hence it transforming the nature of the conflict. Modern conflict resolution has failed to resolve conflict peacefully and

decisively. It adopts military approaches to calm-down conflicts, such as the use of NATO and peacekeeping force in international conflict resolution. Modern methods of conflict resolution give oppressive settlement of the conflict, that is a short-term solution and fails to sustain peace for the long-term rather sometimes it comes to be counterproductive in long-term. During post-conflict building, modern conflict resolution focus on state building such as the transition of democracy, elections, transplant of intra-national institutions, etc. rather than focusing on healing and empowering people indulged in conflict (Ramsbotham, 2011).

In contrast to modern approaches, traditional approaches or IMCR do not have universal application, rather it is context-specific with specific techniques of conflict resolution or the reconciliation that involve rituals, symbols and functional practices (Ginty, 2011). Still, IMCR is being practiced in various places in various forms around the globe. Some of them are in organized or some of them are not, but, practices include dialogue, mediation, relationship and community-based approach and spiritual forms as an ultimate way to resolve local conflict other than the modern formal institution. Sometime IMCR also comes in the manner of oath taking and biting tiger tooth as among Dimasa and Karbi Tribe in Assam and Lotha in Nagaland (D'Sousa, 2011). In practicing IMCR some societies have their own formal body, codified customary laws and solved by councils which involve family, extended family, clan and neighbour and councils of elders. Those are the socio-political organization of the community. The indigenous/traditional institution sometimes implement IMCR, as well as government and conflicts resolved by these institutions, are like conflict over the pasture, grazing land and water resources, often leading to cattle rustling or raids and family disputes (Kamini and Ramar, 2004).

The indigenous/traditional institutions which practice IMCR, are known by different name at different communities such as Kokwo amongst the Pokot and Marakwet tribes in Northern Kenya, the tree of the men amongst the Turkana and Nabo amongst the Sambaro communities. Gacaca in Rwanda. Kappa Mende (truth and reconciliation commission) in Serra Leone, Bashingantahe (facilitation of the peace agreement, the word mean men of integrity who are responsible for settling conflicts at all levels, from the top of the hill to the courts of kings) in Burundi (Ogwang, 2011).

This IMCR included a ritual reconciliation ceremony, called MatoOput among Acholi in northern Uganda, a traditional justice system Gacaca in Rwanda and a traditional consultative and judicial meeting Kgotla in Botswana (Ginty, 2008). IMCR is practiced as private affairs in Micronesia, Island of America (Wolff, et al., 2006).

Indigenous court function as an autonomous body at the local level and at a higher level, it works cooperatively with the modern institution that is either supported by government or funded by

the external sponsor or non-aboriginal international agencies specifically who controls this process and becomes its gatekeeper. Therefore, it raises the question of authenticity, (Victor, 2007; Ginty, 2011).

Once, the indigenous cultural practices and worldviews were destroyed by colonialism. Colonialism imposed western values upon the non-west region in the name of modernization that represents west as superior and best model to rest or indigenous. Western cultures were universalized which includes modern conflict resolution. Colonialism regarded indigenous methods as backward, traditional and this mindset continued during the post-colonial period. The leaders of newly independent countries educated by Western or Soviet powers similarly rejected traditional methods, but, they could not completely uproot the traditional system (Salem, 2009).

After that due to westernization, modern civilization and development thinking, the role and efficacy of the IMCR has been greatly eroded, marginalized, and somewhere diminished. In some places, IMCR has become totally irrelevant, because of individualism; people prefer modern police and the court system. In such places, IMCR is regarded as the archaic, barbaric, uncivilized and outdated mode of mediation. Their young generation has lost faith in elders, traditional institutions and customary laws saying that they belong to the old generation. For such people, external factors and opportunist tendencies largely influence customary methods of brokered peace. Moreover, IMCR or Indigenous customary laws cannot be practiced by other than the particular community. This limits the impact of the IMCR (Kamiri and Ramar, 2004; D'Souza, 2011).

IMCR works mostly at the grassroots level and it is mainly confined to rural and remote areas among indigenous people. Their relevance or development beyond the local level was simultaneously blocked by colonial experience and neglect of post-colonial state (Economic Commission for Africa, 2007; Obarrio, 2011). IMCR is on the sharp decline on the local level too, because of the lack of acknowledgment informal courts and sometimes the spread of Christianity also acted against IMCR and Christianity consider IMCR as unethical. Furthermore, due to the intrusion of outsider and influence of foreign culture, the traditional values among the indigenous community have changed. Lack of proper and efficient enforcement instruments and technique and lack of upgradation in IMCR made it unable to deal with new forms of modern conflict such as environmental conflict and ethnic conflict created by nation-building process, land dispute and conflict over natural resources that are confronting with indigenous people. The new forms of conflict don't permit IMCR to resolve the conflict locally so conflict has to be taken outside the locality and to given universal solution (Wassara, 2007, NADRAC, 2006).

Lastly, regardless of time, space and variety of conflicts, each and every society need some sort of institutional and political framework to maintain its continued existence. Given to the changed

institutional structure and political scenario presently in most regions of the world the structure of political framework is being regulated by strong surveillance of central government that shapes the nature of the diverse territorial population. Once indigenous political systems were plenty and diverse which allowed social groups distantly located from the center of power to garnish themselves as per the particular needs and circumstances of the concerned society. Nowadays these territorial structures have progressively been jeopardized by the central government and its decentralized agencies (Sabatier, 2004). Under the pressure of old and new challenges presently many of the traditional political organizations have annihilated hence, it would be valid to note down the functions, views, and scopes of the surviving ones

RELEVANCE AND SCOPES OF IMCR

Indigenous Conflict Resolution mechanism is relevant mostly in rural and tribal areas where the formal legal system has failed to reach. Their people prefer indigenous mechanism because it is free from corruption, easily accessible, culturally acceptable and morally binding. The rule of natural justice is observed and nobody is condemned or unheard. The system is regarded as the community-owned as it is backed and based on customary law, norms and culture. (Kamini and Ramar, 2004). For Example in Sierra Leone, people prefer the traditional justice system because of high expense and time consumption in formal legal system. Likewise in Afghanistan, people go for traditional dispute resolution because formal institution fails to provide justice to local people in a satisfactory manner (Gang, 2011; Dempsay, 2010; Lappia, 2000). Gadda system in Ethiopia resolved the historical conflict over scarce water resources in Borona region of Ethiopia among Oromo people (Edossa, et al., 2007). The aim of IMCR is not just to resolve the conflict but also to solve the predicament in between the groups involved in the conflict so that they feel content with the judgment (Ramya, 2018)

Right of the indigenous peoples at the international level to their own institutions has been enshrined in ILO Convention No. 169 (articles 2.2b and 8.2) and also in the Declaration on the Rights of Indigenous Peoples, which narrates 'Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases they exist, juridical systems or customs, in accordance with international human rights standards' (Kipuri, 2009).

Furthermore, IMCR in civil wars has found increased acceptance among certain states, international organizations, international financial institutions and NGOs. For example, the World Bank provides a training video on 'Building Social Capital through Peacemaking Circles', in which the Circles are 'an indigenous traditional mechanism for communication and building shared values, consensus and resolving the conflict that was the core of earlier participatory forms of government' (World Bank, 2004). The UN Institute for Training

and Research (UNITAR) has developed a training programme 'to enhance the conflict prevention and peace building capacities of minority and Indigenous Peoples' (United Nation Institute for Training and Research, 2006). The draft UN Declaration on the Rights of Indigenous Peoples describes that such peoples should have access to 'mutually acceptable and fair procedures for the resolution of conflicts and disputes' which would 'take into consideration the customs, traditions, rules and legal systems of the indigenous peoples concerned' (United Nation High Commissioner for Human Rights, 1994: Article 39).

IMCR at Globa

The Indigenous Methods of Conflict Resolution (IMCR) around the globe have been relevant and effectively being practiced in the different region especially among the tribal groups of Latin America, Africa, Middle-east, and Asia including India especially in its tribal zone of Northeast (Ginty, 2011).

Western and Australian IMCR

Western nations including America, Canada and Latin America have acknowledged IMCR after the International indigenous people's movement. IMCR has progressively asserted its place in the political and social spheres and neglected institutional construction that excluded indigenous thoughts. The stakeholders of IMCR endeavored tremendously in achieving validation and which has come in the form of constitutional and legislative amendments in countries where indigenous people represent a sizable portion of the population, and also by implementing indigenous rights in the international human rights agenda. Indigenous people have used domestic and international tools to enjoy these rights. Now a day's most of the nation states worldwide have recognized the indigenous justice system on the ground of human rights (Cordova, 2014).

IMCR is relevant In America among the native tribes. Wherein, American indigenous justice system is somehow influenced by the western legal system. In America there are varieties of the indigenous justice system which differ from tribe to tribe, but, those can be secluded as family and community forum, traditional court, quasi-modern court and modern tribal court. Tribes have maintained community-based jurisdiction over their members and non-member Indians, territorial jurisdiction over their lands, and subject matter jurisdiction over areas as such criminal, juvenile, and civil matters. In family gatherings which are as such family forums and talking circles, disputes are being resolved by chosen family elders or community leaders. Issues generally include family problems, marital conflicts, juvenile delinquency, violent or abusive behaviour, parental misconduct, or property disputes. IMCR or customary laws practices are used in

resolving these issues. But when the family forum fails to resolve a conflict, then the issue may be pursued by the next level of conflict resolution. Wrongdoers consent is obligatory and monitored by the families involved. It is discretionary for decisions and agreements to be recorded by the involved families (National Institute of Justice, 1998).

The government acknowledged IMCR in Australia. Customary laws in Australia was recognized in the year 1986 by the Australian, Northern Territory and Western Australian Law Reform Commissions. It acts under the Federal Court of Australia. It gave autonomy to indigenous or native people to solve the problem by their own, as most of the indigenous conflict or problem could not be normalized by modern system, due to plenty of reasons including inaccessibility, language barrier, the unfamiliarity of the staff etc. (NADRAC, 2006).

IMCR in Africa

Societies in the continent Africa have well preserved traditional culture and IMCR is largely practiced in Africa covering up to 90% of the population. Almost in all the African countries, IMCR is prevalent both formally and informally. Such as, in Sierra Leone, approximately 85% of the population falls under the jurisdiction of customary law, defined under the Constitution as ‘the rules of law which, by custom, are applicable to particular communities in Sierra Leone’ (Chirayath et. al., 2005).

African IMCR has been playing tremendous roles and attained varied forms of conflict. Likewise land disputes, civil disputes, civil war, natural resource conflict, inter-tribal conflict, feud conflict in some instances, criminal cases. For example, dare in Zimbabwe, Bashingantaha8 in Burundi, Gacaca in Rwanda, and MatoOput in north-central Uganda (Mutisi, 2011). Gadaa system in Oromia, Ethiopia resolve the historical conflict over water resources (Edossa, et al., 2007), Miss10 in Northern Kenya was used to resolve the inter-tribal conflict between Pakotand Turkana, Karamojang, Marakwet tribe over access to pasture land and cattle raiding (Pkalya et al., 2004).

The strong relevance of Indigenous African approaches to conflict resolution has various reasons. The first is the tendency to seek ‘African solutions to African problems’ that developed out of the anti-colonial struggle for self-determination. The second is the perceived failure of Western interventions to effectively end African conflicts (Zartman, 2000). IMCR, such as Bashingantahas in Burundi, Gacaca in Rwanda, and MatoOput in north-central Uganda are applied when the state institutions broke down and failed to respond especially during the civil wars (Amisi, 2008).

Many of the international performers including INGOs and NGOs have also shown an utmost interest in African IMCR. As such, in the year 2002, the Lutheran World Federation Inter-Faith Summit provided a forum for a comparative lesson learning exercise between different African traditional peace-making techniques (Lutheran World Federation, 2002). The United Nations Economic Commission for Africa (UNECA) organized a forum in 2004, which discussed and evaluated governance in Africa, including the role of traditional systems of governance in the modern system (Mutusi, 2011). UN also declared two International decades of Indigenous People, indigenous decades 1995- 2004 and 2005-2014, so that further they could protect their rights, cultural values and traditions (Fernandes et al., 2008).

In Africa, some of those traditional conflict resolution institutions have no legal recognition. Just to call few; Bashingantahes in Burundi, Dare in Zimbabwe, Abunzi and Gacaca in Rwanda (Mutisi, 2011), and Jaarsummaa and Qaalluu institutions among the Oromo society in Ethiopia. These institutions had a long history and those have played pivotal roles in the resolution of conflicts and re-construction of social cohesion in post-conflict periods. (Ingelaere, 2008).

IMCR in India

In the Indian context the existence of diverse conflict resolution methods is well-placed and well-set matter. Indian Constitution does approve such conflict resolution methods. In some defined areas of India Indigenous methods of conflict resolution truly possessed command by the backing of the Sixth Schedule of the Indian Constitution and through some other constitutional provisions (Hooker M. B., 1975).

Indigenous methods of conflict resolution are in practice in various forms; mainly practices through traditional institutions of self-government and customary Panchayats. Customary laws are practiced in few regions especially in tribal societies. These customary laws in India are protected by 6th schedule and other constitutional provisions. In the case of the customary laws other than protected by the Indian constitution, IMCR operates through customary Panchayats because all the institutions and practices of traditional mechanisms of conflict resolution are not recognized by the state. Examples of customary Panchayats prevalent in India are; Kulam Panchayat in Orissa, Koot in Tamilnadu, Dzumsa in Sikkim, Meeting in Chattisgarh, JatiPanch in Rajasthan, Halli Panchayati and Nadu Panchayati in Karnataka (Fernandes, 2008). To explain Dzumsa is a method of indigenous conflict resolution is approved by the customary law courts of Sikkim and it is the Sikkimese Political institution prevailing in different parts of Sikkim i.e. the villages of North districts of Sikkim e.g. Lachen and Lachung. The Dzumsa is the traditional administrative system of high altitude communities speaking a Tibetan dialect and settled down in Sikkim's North District. This system of self-governance was initially established during the first half of the 19th century to provide

structure and cohesion for those societies and their activities. These communities were too far removed from the central regime to follow rules applicable to other regions of Sikkim. In the 1970s, when the Indian Government introduced the reorganization of Sikkim's administration and initiated the 'panchayat' system of local government, the new system was not being imposed in the valleys of Lachen and Lachung. In the long run, the dzumsa got officially recognized in 1985 and continued to function since then up to present-day. The word dzumsa refers to the 'gathering place' in Sikkim (Sabatier, 2004) Dzumsa does not have codified customary laws of conflict resolution. They have their own oral customary law that continues through generations. They do not have any discrete judicial body: everything is being dealt with by Dzumsa itself. Dzumsa solves the local social conflicts such as family disputes, theft, land disputes, divorce, and adultery with the help of elders of the village (Chakraborty, 2011).

In many areas of Northeast India there two methods of conflict resolution at work – As like 'Customary law courts' and 'State law courts'. The existence of such simultaneous legal methods in Northeast India is generally mentioned as 'Legal pluralism'. 'Legal pluralism' commonly indicates to co-existence of diverse legal methods which are approved by the state (Pereira et. al, 2018). As per Hooker 'legal pluralism' introduce system or condition under which multiple laws interplay in society (Hooker M. B., 1975).

Customary methods to conflict resolution in the state Arunachal Pradesh have played a major role in maintaining harmony and peace to the peoples of the tribal society. There these methods are being upheld within the political organization of each and every tribe. There the methods have been regulated by the particular condition and nature of each tribe, making the customary law identical to each tribe. Even within a tribe such as Nyishi, the nature of conflict and conflict resolution methods have never been static. Which have persistently changed over time getting influenced by the character and dynamics of socio-political and economic activities and events (Ramya, 2018) .

CONCLUSION

There is a saying that 'necessity is the mother of invention'. Conflict resolution was initiated out of necessity. Conflict is an inevitable part of society Conflict exist in all spheres of human life and conflict resolution processes are fundamental to its aspirations for peace. Therefore, all the societies had invented their own methods of conflict resolution.

Prior to the introduction of modern conflict resolution, all societies, tribes, clans, regions had their own indigenous mechanism of conflict resolution based on their culture, tradition, religion etc. It was context-specific which differed from society to society.

But once after the initiation of colonization indigenous cultural values and practices were undermined by colonialists. After that Westernization and other further culture change also suppressed indigenous methods. Those regarded indigenous way as backward but still they were unable to replace the indigenous methods.

The modern judicial system of conflict resolution mostly based on western liberal values is universally applied in all types of conflicts. As such it regards to conflict resolution methods as one size fits all. But, modern conflict resolution methods have failed to resolve all sort of conflicts, rather it served as counter-productive in appeasing local conflicts. It is confronting lots of comments, condemnation and challenges from diverse dimensions for being oppressive, un-consensual and technocratic. It is found to be more Euro-centric, therefore it has failed to understand the nature of the conflict in local context. Modern conflict resolution acts within the political and economic framework, backed by western liberal values. But specific circumstances demand local approaches with the understanding of local context. The conventional western perception of peace is very slender which equates with an absence of violence. This commonly upheld western view and fails to take into account the actual situation on the ground in many regions of the Global South.

But, indigenous understanding of conflict resolution and peace is different from modern. Any sort of conflict resolution must include a vast extent from simple absence of physical violence, to healing and reparation of broken relationships. Understanding of peace is not merely an absence of violence rather it is an absence of violence with justice. Modern conflict resolution focuses on the elimination of physical conflict only without giving much attention to equity and justice. Peace without out justice and merely absence of direct violence is the negative peace that would not sustain for the long term. Here lies the importance of IMCR. As IMCR focuses on removal of root causes of conflict, hence it is context specific, legitimate and effective in resolving local conflict, which is a necessary condition for establishing a durable and self-sustaining peace. Indigenous conflict resolutions have more potential to maintain positive peace because it gives more importance to the removal of root causes of conflict.

But sometimes lack time-based revise in IMCR made it unable to cope with new forms conflict which calls for proper time base revise or to implement modern or multiple conflict resolution methods. As such it's also decisively true that all sorts of modern problem irrespective of space can't be solved by IMCR. Hence, the jurisdiction of modern nation-states, should allow space for both indigenous and modern methods of conflict resolution and sometimes intermingle both considering the ground of conflict.

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